



131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1437 of 2024

Date of decision : 05.08.2024

NETRA PAL

....Petitioner

Versus

DHARAM VATI AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sushil Jain, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in revision petition being aggrieved of order dated 25th of July, 2023 passed by Civil Judge (Junior Division), Gurugram whereby the application filed by the petitioner under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure for grant of ad-interim injunction stands dismissed. Further challenge is to the order dated 4th of September, 2023 passed by Additional District Judge, Gurugram dismissing the appeal preferred by the petitioner.

2. Petitioner filed suit for partition claiming that he along with defendants are co-sharers in the suit property. However, the plaintiff claimed that the defendants are in possession of land more than their share and are raising construction thereupon. Trial Court dismissed the application filed by the plaintiff holding that it is admitted case of the

2024:PHHC:099787



plaintiff that he also raised construction over his share and thus is precluded from seeking injunction against the co-sharers. The aforesaid findings stand affirmed by the lower Appellate Court.

3. Mr. Jain is not in position to dispute that the defendants have raised construction in their capacity as co-sharers. So far as the plea w.r.t. they being in possession of more than their share is concerned, the same is subject matter of main suit wherein the plaintiff is seeking decree of separate possession by way of partition.

4. Law regarding rights of co-owners is well settled. Wherein any property is held by several co-owners, each of them has interest in every inch of the same, though his interest is qualified and limited by similar interest of the other co-owners. One co-owner cannot take exclusive possession of the property nor commit any act of waste, ouster or illegitimate use, and if he does so he may be restrained by an injunction. The law w.r.t. co-owners and grant of injunction at the behest of one co-owner against the other has been settled by Division Bench of this Court in **Bachan Singh vs. Swaran Singh, AIR 2001 (Punjab & Haryana) 112** observing as under:

“14. It is also useful to refer to the decision of the Apex Court in *P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 Supreme Court 314* wherein it has been held that "the possession of a co-heir is considered in law as possession of all the co-heirs. When one co-heir is found in possession of the property, it is presumed to be on the basis of joint title. The co-heir in possession cannot render his

2024:PHHC:099787



possession adverse to the other co-heir, not in possession, merely by any secret hostile animus on his own part in derogation of the other co- heir's title. It is settled rule of law that as between co-heirs, there must be evidence of open assertion of hostile title coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."

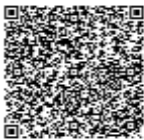
15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that :

- (i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.
- (ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.
- (iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.
- (iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner."

5. In view of the aforesaid settled proposition of law, the petitioner/plaintiff admittedly has raised construction over his share and is in

2024:PHHC:099787



possession thereof. He alleges encroachment by the co-owner. This Court finds that co-owner cannot be alleged to be an encroacher merely for the reason he is raising construction over the property in view of the law laid down by Division Bench in *Bachan Singh's* case (supra) as mere raising construction in the common property does not amount to ouster of the other co-owner. The parties are already before Civil Court seeking separate possession by way of partition. In view of above, this Court does not find that the plaintiff has *prima facie* case in his favour or that the balance of convenience tilts to his side.

6. In view thereof, no fault can be found with the orders passed by both the Courts below. Resultantly, the instant revision petition is dismissed.

August 05, 2024

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No